

CITY OF NEWPORT BEACH
Planning Commission Minutes
 April 7, 2011
 Regular Meeting – 6:30 p.m.

ROLL CALL: Commissioners Eaton, Unsworth, Hawkins, McDaniel, Toerge, Ameri, and Hillgren - present		
STAFF PRESENT: James Campbell, Acting Planning Director Gregg Ramirez, Senior Planner Leonie Mulvihill, Assistant City Attorney Javier Garcia, Senior Planner Fern Nueno, Assistant Planner Marlene Burns, Administrative Assistant		
POSTING OF THE AGENDA: The Planning Commission Agenda was posted on March 31, 2011.		
PUBLIC COMMENTS:		None
REQUEST FOR CONTINUANCES:		None
* * *		
CONSENT ITEMS		
SUBJECT: MINUTES of the regular meeting of March 17, 2011. Motion made by Commissioner Toerge and seconded by Commissioner Hawkins to approve the minutes as corrected. Motion carried with the following vote:		ITEM NO. 1 Approved
Ayes:	Eaton, Unsworth, Hawkins, McDaniel, and Toerge	
Noes:	None	
Abstentions:	Ameri and Hillgren	
* * *		
PUBLIC HEARING ITEMS		
SUBJECT: North Newport Center Planned Community Amendment – (PA2011-017) 800, 840, 860, 880 Newport Center Drive A planned community development plan amendment to incorporate the Block 800 Newport Center Planned Community (PC-23) into the North Newport Center Planned Community (PC-56) and a code amendment to change the zoning classification of this property from PC-23 to PC-56. Additionally, the proposed amendment includes revisions to the sign and lighting standards within the PC-56 Development Plan. Fern Nueno, Assistant Planner, gave an overview of the staff report with a brief PowerPoint presentation. Also an amendment to page 14 of the North Newport Center Planned Community Development Plan which was amended to be consistent with Section IIB, "Table 2 – Development Limits" on page 13, was distributed. Commissioner Hawkins asked if Table 2 was being amended. Ms. Nueno responded that no changes affected the square footage that is permitted by the General Plan and that it reflected transfers of allowed Development previously approved by the City Council and changes incorporating the Pacific Financial property. Commissioner Hawkins asked if that in addition to affecting Block 800, it affected Block 100 and asked if he needed to		ITEM NO. 2 PA2011-017 Approved

recuse himself as he has an office within Block 100. Assistant City Attorney, Leonie Mulvihill, answered that there is no conflict as there is no property interest affected by this decision.

Commissioner Hawkins, referring to Table 2, asked that footnote C be expanded to reflect changes of the previous transfer as well as the transfers related to Block 800.

After discussion, the Commission identified and presented the following questions:

Referring to Section IIB, "Table 2 – Development Limits" from the North Newport Center Planned Community Development Plan, Commissioner Eaton inquired as to where the square footage was applied from Block 100. Ms. Nueno responded that it was transferred to the two other blocks, and that the square footage cannot be built until Block 100 is demolished or made uninhabitable.

Commissioner Hawkins recused himself as he has an ownership/leasehold interest in a building within Block 100 of PC-56 after Ms. Mulvihill indicated that he might have a conflict of interest after learning more about the specifics of the amendment.

Regarding residential units, if the table is transitory, Commissioner Eaton asked why were units which are currently allocated to Block 500 not updated in the "Table 2 – Development Limits." Dan Miller, representing Irvine Company, responded by stating that the transfers were based on positive traffic impact analysis and the units are allowed in any of the Mixed-Use Blocks. Ms. Nueno added that the 430 units could be placed under Block 500 with a footnote remaining under each of the Mixed-Use Blocks to make it consistent with the rest of the changes to "Table 2 – Development Limits." All were in agreement.

In response to a question by Commissioner Eaton regarding what the plans were for Block 100, Mr. Miller replied that the square footage was transferred to Block 600 to allow the construction of a new building. Mr. Miller added that before the Certificate of Occupancy for the new building will be issued, the buildings within Block 100 would be made uninhabitable, unless there was square footage that is left over only then could it be transferred back after approval by the City Council.

A clarification was requested by Commissioner Unsworth as it related to "Eating and Drinking Establishments," and if they were to be treated the same as Zoning Code. Ms. Nueno responded by saying that they were not the same definitions and indicated that on page 30 of the North Newport Center Planned Community Development Plan the definition was established.

Commissioner Unsworth, referencing Section IIB, Table 1 of the North Newport Center Planned Community Development Plan, Fashion Island under Eating and Drinking Establishments, asked would the "P" with an asterisk (Minor Use Permit Issued by the Planning Director) apply to eating and drinking establishments that stayed open after 11:00 p.m. Fern Nueno answered that yes in Fashion Island restaurants are permitted by right and with approval of a Minor Use Permit if they are proposing to sell alcohol. In conclusion, the PC Development Plan supersedes the PC Zoning Code if something is addressed within it; otherwise if it is not addressed in the PC Development Plan, then the PC Zoning Code regulations prevail.

Commissioner Unsworth received clarification that in Fashion Island, for the sale of alcohol after 11:00 p.m. an Operator's License would be needed, therefore it would apply to Block 100, 400, and 800. Furthermore, it was confirmed that under the Planned Community Development Plan, there is a combination Minor Use Permit with an Operator's License required.

It was suggested by Commissioner Unsworth that it be clearly stated that all decisions made by the Planning Director as allowed in the Development Plan be appealable to the Planning Commission then to the City Council.

<p>Mr. Miller stated that he agreed with staff's recommendation.</p> <p>Public comment period was opened.</p> <p>No public comments.</p> <p>Public comment period was closed.</p> <p>Motion made by Commissioner Hillgren and seconded by Commissioner Unsworth, to adopt a resolution recommending City Council approval of Planned Community Development Plan Amendment No. PD2011-001 and Code Amendment No. CA2011-004 with the following modifications:</p> <ul style="list-style-type: none"> • Modify the Resolution with the addition of, <i>"The square footage numbers indicated for each block in Table 2 (Development Limits) of the PC-56 Development Plan may not be current or correct due to allowable transfers of development rights under the Development Agreement, General Plan, and PC-56 Development Plan. The square footage numbers cannot and are not being increased by this application as the development limits are regulated by the General Plan."</i> • Addition of Amendment that was presented, page 14 of the North Newport Center Planned Community Development Plan was updated and distributed as it was made consistent with Section IIB, "Table 2 – Development Limits" on page 13. <p>Motion carried with the following vote:</p>							
<table> <tr> <td>Ayes:</td><td>Eaton, Unsworth, McDaniel, Ameri, Toerge and Hillgren</td></tr> <tr> <td>Noes:</td><td>None</td></tr> <tr> <td>Recusals:</td><td>Hawkins</td></tr> </table>	Ayes:	Eaton, Unsworth, McDaniel, Ameri, Toerge and Hillgren	Noes:	None	Recusals:	Hawkins	
Ayes:	Eaton, Unsworth, McDaniel, Ameri, Toerge and Hillgren						
Noes:	None						
Recusals:	Hawkins						
* * *							
<p>SUBJECT: West Newport Amendments – (PA2010-182, PA2010-190, and PA2011-014) 6904, 6908-6936, and 6480 West Coast Highway</p> <p>Commissioner Hawkins returned to join the meeting.</p> <p>Amendments to the General Plan, Coastal Land Use Plan, and Zoning Code to change the designations of three properties from Two-Unit Residential (RT and RT-E) to Visitor Serving Commercial (CV) or Mixed Use-Vertical (MU-V) land use designations. The amendments were initiated by the property owners who are seeking to continue the existing nonconforming commercial use of their properties. All three properties are currently developed with commercial and mixed-use buildings, and no new land use or development is proposed at this time.</p> <p>Javier Garcia, Senior Planner, gave a brief overview of the staff report with a PowerPoint presentation. He mentioned that the original recommendation was to change all three properties to Visitor Servicing Commercial (CV), but that General Commercial (CG) is more appropriate for 6480 West Coast Highway, even though the applicants proposed Mixed Use-Vertical (MU-V).</p> <p>Commissioner Hawkins asked as to the reason of the change in decision of not going forth with the Mixed Use-Vertical (MU-V) land use designation. Acting Planning Director, Jim Campbell, responded that the reason for the recommendation of General Commercial (CG) is that it would allow for a broader list of uses thereby achieving the goal of the applicant to protect, preserve, and continue the existing commercial and residential uses.</p> <p>Chairperson McDaniel stated that in addition to considering the applicants' requests, there was a need to look at the long-term needs of the City as well.</p> <p>A discussion ensued regarding the development feasibility of the three properties to be</p>	<p>ITEM NO. 3 PA2010-182, PA2010-190, AND PA2011-014 Approved</p>						

pursuant to the Mixed Use-Vertical (MU-V) land use designation standards. Mr. Garcia noted that for the Kennard Property (6480 West Coast Highway) it would prove challenging as a mixed-used development as it would require nine (9) parking spaces, which would be difficult to provide. Therefore, the CG (General Commercial) would be staff's recommendation for this property.

Paul K. Watkins of Watkins, Blakely, & Torgerson, LLP, representing The National Cat Protection Society stated that the Mixed Use-Vertical (MU-V) land use designation would not work as it would preclude the organization from providing basic veterinarian services and boarding of cats. Mr. Campbell clarified that there would be no issue as it would fall under the legal non-conforming use Chapter of the Zoning Code and therefore would not be subject to abatement and there would be limits to any expansion. He added that some modifications to the property would be acceptable.

Commissioner Eaton asked as to the constraints that the Public Notice placed on the Planning Commission's ability to change the zoning. It was determined that the Commission is not limited to the zoning mentioned exclusively in the Public Notice and any recommendation that the Commission deems acceptable can be made to the City Council.

In response to a question from Commissioner Eaton regarding noise impact. It was noted by Mr. Campbell that the interior impact of traffic noise from West Coast Highway would be mitigated by a sound wall barrier and also by triple-paned windows meeting the minimum standards for residential properties.

Mr. Watkins, representing The National Cat Protection Society, was satisfied with either Mixed Use-Vertical (MU-V), General Commercial (CG), or Visitor Serving Commercial (CV) as long as there was assurance from Mr. Campbell that there would be not any abatement. Mr. Campbell reiterated there would be no abatement for a continuation of this use under the legal non-conforming use Chapter of the Zoning Code.

T.K. Brimer, Owner of the Frog House, would like for his properties to continue business use as well as retain residential use. He requested that his property be designated Mixed Use-Vertical (MU-V).

Commissioner Hawkins asked regarding the Coastal Commission approvals, if Mr. Brimer and Mr. Watkins were prepared for the risk involved with the Mixed Use-Vertical (MU-V) before the Coastal Commission; the other alternative is Visitor Serving Commercial (CV) that would likely not pose a concern before the Coastal Commission. In response, Mr. Brimer stated that he was prepared for that risk. Mr. Watkins stated that whatever poses less risk before the Coastal Commission, and if it is Visitor Serving Commercial (CV), that is preferred.

Commissioner Toerge clarified the differences of the three zoning options for Mr. Watkins and mentioned that if there was an intent to modify, then Mixed Use-Vertical (MU-V) or Visitor Serving Commercial (CV), would not allow present use and would be subject to restrictions; however, if there was no intent to modify the existing use then Mixed Use-Vertical (MU-V) or General Commercial (CG) were viable options to consider. As a result, Mr. Watkins stated that the preference was that of Mixed Use-Vertical (MU-V).

Public comment period was opened.

George Lesley, a resident of Newport Beach, asked how the noise impact would be mitigated for the residential part of the mixed-use development. Commissioner Hawkins responded that the zone is currently residential and that the noise impact would be mitigated by insulation and triple-paned windows.

Public comment period was closed.

<p>Motion made by Commissioner Toerge and seconded by Commissioner Hawkins, to adopt a resolution recommending the City Council approve amendments to the Land Use Element of the General Plan, Coastal Land Use Plan and the Zoning Code to change the land use designations from Two-Unit Residential to Mixed-Use Vertical (MU-V) for properties located at 6904, and 6908-6936 West Coast Highway (PA2010-182, and PA2011-014); and to Commercial General (CG) for the property located at 6480 West Coast Highway (PA2010-190) with the following modifications:</p> <ul style="list-style-type: none"> • Addition of the following Finding to the Resolution: <i>“The subject property at 6904 West Coast Highway is occupied by a veterinary and animal boarding care facility which was established by benefit of Use Permit No. 353 in 1957 (Animal Hospital) and its subsequent amendments in 1973 and 1994 (established the current National Cat Protection Society use as a cat care and boarding facility), is a legal nonconforming use and any future changes are subject to the provisions of the Nonconforming Uses and Structures Chapter of the City of Newport Beach Municipal Code (currently codified as Chapter 20.38).”</i> • In addition, the changes amending the Resolution and Exhibits reflecting the motion made. <p>Motion carried with the following vote:</p>		
<p>Ayes:</p> <p>Noes:</p>	<p>Eaton, Unsworth, Hawkins, McDaniel, Ameri, Toerge and Hillgren</p> <p>None</p>	
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STAFF AND COMMISSIONER ITEMS		
<p>Planning Director's report:</p> <ul style="list-style-type: none"> • City Council approved: <ul style="list-style-type: none"> ○ Use-Permit for Crow Burger ○ Santanella Terrace Amendment • City Council received and filed: <ul style="list-style-type: none"> ○ General Plan Progress Report • City Council adopted MOU to proceed with the Rhine Channel clean-up to begin in August. • A permanent Community Development Director will be selected in the coming weeks. • Malarky's application has been appealed by Councilmember Hill and is to be heard at the April 26, 2011, City Council Meeting. • Councilmember Curry appealed Broadmoor set-back determination and will be heard at the May 10, 2011, City Council Meeting. • In-Lieu Parking, Review Authority for Alcohol related Minor Use Permits, and Appeal Fees recommendations will be before the City Council on a future agenda. 		ITEM NO. 4
Planning Commission reports:		ITEM NO. 5
Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report. - None		ITEM NO. 6
Requests for excused absences – Commissioner Toerge and Commissioner Ameri requested to be excused from the April 21, 2011 Planning Commission Meeting.		ITEM NO. 7
<p>ADJOURNMENT: 8:04 p.m. MICHAEL TOERGE, SECRETARY CITY OF NEWPORT BEACH PLANNING COMMISSION</p>		